

## When Families Fight: Ways to Resolve Inter-Family Disputes

“The family is truly desperate. And when people get desperate, the knives come out.” As with the hit film *Knives Out*, a family-member’s death and the ensuing splitting-up of the estate is often the source of unpleasant family drama and discord. Disputes can arise from non-compliance with legal formalities, fraud, duress, forgery, undue influence, and fights over who gets the family toaster. Age-old sibling rivalries come flooding back, and before you know it, the family is “lawyering up” against each other.

Avoid it! Such drama is great fodder for movies, but today’s families have enough difficulties staying supportive and together. Families must work extra hard to avoid bitter disputes, because after the case is settled and done, unlike in commercial or tort litigation, the parties are still related to each other and still deserve a supportive and loving family. With that in mind, here are a few ways attorneys can help resolve inter-family disputes without protracted, costly, and messy litigation.

### Mediation and Family Settlement Agreements

Mediation is the easiest and quickest way to resolve will contests and often leads to a family settlement agreement. Family settlement agreements are contracts between the interested parties and, as such, are governed by Texas contract law. In a family settlement agreement, all beneficiaries agree to divide the estate assets in a different manner than provided in the will. A valid family settlement agreement must include all beneficiaries of the will and contain both an agreement not to probate a will and an agreed plan of distribution. *In re Estate of Webb*, 266 S.W.3d 544 (Tex. App.—Fort Worth 2008, pet. denied). Such an agreement can be reached early on in the dispute, before incurring large attorneys’ fees.

### Converting to a Dependent Administration

An independent executor enjoys minimal supervision by the probate court and does not require court approval to pay debts, transfer title, or sell property. This is often preferred. But what if a beneficiary disagrees with the executor’s actions and threatens to sue him if he makes a proposed distribution? One option is for the executor to convert the estate to a dependent administration, where the judge must approve all actions by the executor. While cumbersome and expensive, the court presides over the administration, which protects the executor from liability.

### Judicial Discharge

An independent executor may not require a waiver or release from a distributee as a condition of delivery of the property. Tex. Est. Code § 405.002(b). So, what if a beneficiary is unwilling to sign a family settlement agreement or release the executor? A

little known provision in the Estates Code provides an avenue by which an executor may obtain a judicial discharge of all matters relating to the administration of the estate. Section 405.003 provides: “if there is no further need for an independent administration of the estate, the independent executor of the estate may file an action for declaratory judgment ... seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.” Tex. Est. Code § 405.003(a). By filing a declaratory judgment action in the probate proceeding, an independent executor may obtain a judicial declaration of rights or legal relations with respect to the estate—both to determine any questions arising from the administration of the estate, and to determine the rights of an independent executor regarding fiduciary fees and settling of accounts—and then be discharged from liability relating to his administration of the estate. Tex. Civ. Prac. & Rem. Code § 37.005(3), (4); Tex. Est. Code § 405.003.

The executor must first file a final accounting and distribution plan, then file the declaratory judgment action seeking judicial discharge. On or before filing the petition, the executor must distribute all remaining estate assets, retaining a reasonable amount for attorneys’ fees and final expenses pending court approval of the final account and distribution plan. Each estate distributee must be personally served with citation or agree to waive such service.

Obtaining a judicial discharge under Section 405.003 is particularly attractive when beneficiaries are likely to sue the executor because the judicial discharge shields the executor from liability once discharged. *In re Estate of Whittington*, 409 S.W.3d 666 (Tex. App.—Eastland 2013, no pet.). However, this method can be time-consuming and expensive since it requires preparation of an account and a hearing. Tex. Civ. Prac. & Rem. Code § 37.007; Tex. Est. Code § 405.003(c).

Another downside to this relief is that it terminates the estate and the letters testamentary are no longer effective. This could pose a problem if there is a later need for an estate representative’s signature on a deed or other instrument.

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